

**In the United States Court of Appeals
For the District of Columbia Circuit**

Kumar Naharaja,

Plaintiff-Appellant

v.

No. 17-5107

1:16-cv-00024-BAH

National Labor Relations Board, *et al.*

Defendants-Appellees

**OPPOSITION TO PLAINTIFF-APPELLANT'S
FIFTH MOTION TO HOLD APPEAL IN ABEYANCE**

The National Labor Relations Board (NLRB) hereby opposes Plaintiff-Appellant Kumar Naharaja's (Naharaja) fifth request to hold this case in abeyance. In support, the Board shows as follows:

1. On December 21, 2016, the United States District Court for the District of Columbia granted the NLRB's motion to dismiss Naharaja's suit both for lack of standing and because, over the previous eight-month period, Naharaja sought eleven extensions of time to respond to the NLRB's motion, "abused the opportunity afforded him with grants of extension of time," and ultimately still failed to respond to the NLRB's motion. Mem. & Order at 2-3, *Naharaja v. NLRB*, No. 16-cv-0024, ECF No. 41.

2. On May 3, 2017, Naharaja filed a Notice of Appeal. *Naharaja v. NLRB*, No. 16-cv-0024 (D.D.C.), ECF No. 60; *see* D.C. Cir. ECF No. 1675551. This Court docketed the Notice of Appeal and ordered Naharaja to pay the docketing and filing fee or file a motion to proceed *in forma pauperis* by June 16. Order, ECF No. 1675555.

3. Naharaja failed to meet the Court's June 16, 2017 deadline. Instead, on June 22, he filed his first motion to hold the case in abeyance, asserting that he needed the additional time to pay the fee because he had "suffered severe economic losses" as a result of being a "victim of multiple crimes perpetuated by his supervisors which resulted in [his] unlawful termination" three years earlier from his residency program at Oregon Health & Science University School of Medicine, and because he was involved in an ongoing landlord-tenant dispute that required the payment of other fees. Pl. First Mot. 2-3, ECF. No. 1681033. Naharaja asserted that he would use the requested time either to seek sponsors to help him pay the fee or to seek interim relief as a crime victim. *Id.* at 4.

4. On July 5, 2017, the Court granted Naharaja an extension until August 31. Order, ECF No. 1682648. The Court's order stated explicitly

that failure to comply with the order “will result in dismissal of the appeal for lack of prosecution,” citing D.C. Circuit Rule 38. *Id.*

5. Naharaja failed to meet the Court’s extended deadline. On September 11, 2017, Naharaja filed a second motion requesting that the case be held in abeyance until October 31, asserting that in addition to being an unemployed crime victim engaged in a separate landlord-tenant dispute, he was recuperating from an accident. Pl. Second Mot. 3-4, ECF No. 1692286. By order dated September 27, the Court granted Naharaja’s requested extension to October 31, stating again that the failure to comply would result in a dismissal for lack of prosecution. Order, ECF No. 1694984.

6. Naharaja failed to meet the second extended deadline and instead filed a belated request on November 3, 2017 for a third extension of time, proffering the same reasons as in his second request. Pl. Third Mot., ECF No. 1703066. By order dated November 29, the Court granted Naharaja a third extension, until December 29, to pay the appellate docketing and filing fees or to file a motion for leave to proceed *in forma pauperis*. Order, ECF No. 1706479.

7. Naharaja failed to meet the third extended deadline for paying the required fees or filing a Federal Appellate Rules of Procedure (FRAP)

Rule 24(a) motion for *in forma pauperis* status. On January 1, 2018, Naharaja filed a fourth motion to hold the case in abeyance requesting that he be given until February 21, 2018 to do so, asserting the same grounds—unemployment and his status as a crime victim—for extending the deadline. Pl. Fourth Mot. 3, 6, ECF No. 1711030. The Court has not ruled on Naharaja’s fourth motion.

8. Naharaja has now failed to meet his own requested extended deadline of February 21, 2018. Instead, on February 28—two months after the Court’s last deadline—Naharaja filed a fifth motion to hold the case in abeyance. In support, Naharaja relies on the same factual assertions as in his earlier motions and again asserts that with another month extension “a potential arrangement for payment of the filing [and] docketing fee for this Appeal may likely be possible” or, alternatively, it will afford him the opportunity to file a FRAP Rule 24(a)(1) motion. Pl. Fifth Mot. 2-6, ECF No. 1719872.

ARGUMENT

A federal court’s inherent power to dismiss sua sponte for lack of prosecution is an authority “necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Link v. Wabash R. Co.*, 370 U.S. 626, 630-31 (1962). While a “mere

lapse of time does not warrant dismissal when the [appellant] has been diligent throughout,” the “essential question [is] whether upon the whole proceeding [appellant has] manifested reasonable diligence.” *Cherry v. Brown-Frazier-Whitney*, 548 F.2d 965, 969 (D.C. Cir. 1976).

This Court recognizes that dismissal is appropriate when an appellant fails to timely file required documents. *See e.g. Holiday v. United States*, No. 15-5185, 2017 WL 2787375, at *1 (D.C. Cir. Jan. 11, 2017) (dismissed appeal for lack of prosecution when appellant did not respond to court’s show cause order); *Thomas v. Holder*, 750 F.3d 899, 901 (D.C. Cir. 2014) (same). Repeated failures, as here, to meet deadlines, file timely motions for extensions of time, or offer adequate reasons for the late filings reflect an “egregious disregard of the court’s processes” that warrants dismissal for want of prosecution pursuant to D.C. Circuit Rule 38. *CNPq Conselho Nacional de Desenvolvimento Cientifico e Technologico v. Fontes*, No. 95-7067, 1996 WL 680208, at *1 (D.C. Cir. Oct. 4, 1996), *as clarified on reh’g* (Dec. 12, 1996). *Accord Barber v. Am. Sec. Bank*, 841 F.2d 1159, 1162 (D.C. Cir. 1988).

For eight months, Naharaja has recycled the same excuses to justify his failure to pay the docketing and filing fee or to file a motion to proceed *in forma pauperis*. Meanwhile, Naharaja has yet to explain what, if any,

efforts he has undertaken to attempt to comply with the Court's order that he either pay the fee or file a motion to proceed *in forma pauperis* under FRAP Rule 24. If, as he claims, he cannot pay the docketing and filing fee, his obvious alternative is to proceed under FRAP Rule 24. Naharaja has chosen to do neither. As Chief Judge Howell explained below in dismissing Naharaja's district court suit, "All of these excuses amount to 'an updated version of the classic 'my dog ate my homework' line.'" *Fox v. Am. Airlines, Inc.*, 389 F.3d 1291, 1294 (D.C. Cir. 2004). In sum, the plaintiff has proven himself to be a diligent attorney on his own behalf, but he has misplaced his industry on delaying his response to the pending motion rather than addressing the motion's merits." Mem. & Order at 1-2, *Naharaja v. NLRB*, No. 16-cv-0024, ECF No. 41. In light of this Court's repeated warnings, Naharaja's continuing history of unmet deadlines, and his failure to proffer adequate new justifications, any further extension should be denied and the Court is warranted in dismissing his appeal. *See Tibbetts v. Sweetland*, No. 02-7151, 2004 WL 287123, at *1 (D.C. Cir. Feb. 3, 2004).

CONCLUSION

For the reasons set forth above, this Court should deny Naharaja's untimely request for a fifth extension of time to file the required fees or a FRAP Rule 24 motion for *in forma pauperis* status. In accord with the

Court's most recent order, Naharaja's patent "failure to comply" with the order to file by December 29, 2017 appropriately requires "dismissal of the appeal for lack of prosecution."

Respectfully submitted,

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Dated at Washington, D.C.
this 9th day of March, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this day I served true and correct copies of the foregoing via the Court's electronic filing system.

/s/ Portia Gant
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/s/ Portia Gant

Attorney for the

National Labor Relations Board

Dated March 9, 2018